

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**SB 31 – HB 399**

February 18, 2013

**SUMMARY OF BILL:** Enhances the current felony classification for drug offenses, as listed in Tenn. Code Ann. § 39-17-417, involving the manufacture, delivery, sell, or possession of controlled substances committed in “drug-free zones” near hospitals, alcohol and drug treatment centers, and non-residential opioid treatment program facilities. Limits the applicability of this statute to such facilities’ hours of operation and the 90 minutes prior to opening and 90 minutes after closing.

Requires offenders to be sentenced one felony classification higher than the classification provided under law. Imposes fines for offenses committed in drug-free zones based on the class of the felony: up to \$10,000 for a Class E felony; up to \$20,000 for a Class D felony; up to \$40,000 for a Class C felony; up to \$60,000 for a Class B felony; and up to \$100,000 for a Class A felony.

Requires offenders to serve the minimum sentence within the offender’s appropriate range without applying sentencing credits and without release eligibility.

**ESTIMATED FISCAL IMPACT:**

**Increase State Revenue – Not Significant**

**Increase State Expenditures – \$20,728,400/Incarceration \***

Assumptions:

- An offender under Tenn. Code Ann. § 39-17-417 can be convicted of a Class A, B, C, D, or E felony. Any of these offenses, if committed in a “drug-free zone” will be punished one classification higher than prescribed under current law.
- According to TBI’s 2011 Crime in Tennessee report ([http://www.tbi.tn.gov/tn\\_crime\\_stats/publications/Crime%20in%20Tennessee%202011.pdf](http://www.tbi.tn.gov/tn_crime_stats/publications/Crime%20in%20Tennessee%202011.pdf)), there were 820 drug offenses committed at medical facilities.
- Also in the report, 27,421 drug offenses (or 41 percent) of the 66,693 total drug offenses in 2011 occurred between the hours of 9 a.m. and 6 p.m. Assuming the same trend exists for drug offenses committed at medical facilities, 336 drug offenses occurred at medical facilities last year, either 90 minutes before the facility opened, during its hours of operation, or 90 minutes after the facility closed (820 drug offenses committed at medical facilities x 0.41 = 336 drug offenses).

- According to statistics from the Department of Correction (DOC), there has been an average of 3,577 admissions per year under Tenn. Code Ann. § 39-17-417 over the last 10 years. Of these 3,577 admissions approximately two percent were Class A felonies, approximately 30 percent were Class B felonies, approximately 47 percent were Class C felonies, approximately 12 percent were Class D felonies, and approximately 9 percent were Class E felonies. There is no higher classification of felony than a Class A. Only the Class B, C, D, and E felonies will increase incarceration costs.
- Assuming a similar break down will occur for drug offenses under Tenn. Code Ann. § 39-17-417 when committed at medical facilities, the bill will result in the following number of felony offenders receiving a sentence one classification higher:
  - 101 Class B felonies ( $336 \times 0.30$ );
  - 158 Class C felonies ( $336 \times 0.47$ );
  - 40 Class D felonies ( $336 \times 0.12$ ); and
  - 30 Class E felonies ( $336 \times 0.09$ ).

*Assumptions Relative to Class B Felonies:*

- The bill will result in Class B felony offenders under Tenn. Code Ann. § 39-17-417 serving an additional 10.49 years (15.78 years, the average time served for a Class A felony – 5.29 years, the average time served for a Class B felony).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 12 ( $101 \times .1178$ ) additional admissions for a total of 113 ( $101 + 12$ ).
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ( $113 \text{ offenders} \times .4911 = 56 \text{ offenders}$ ).
- According to the DOC, the average operating cost per offender per day for calendar year 2013 is \$64.17.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 57 offenders [ $113 \text{ offenders} - 56 \text{ (recidivism discount)}$ ] serving an additional 10.49 years (3,831.47 days) for a total of \$245,865 ( $\$64.17 \times 3,831.47 \text{ days}$ ). The cost for 57 offenders is \$14,014,305 ( $\$245,865 \times 57$ ).

*Assumptions Relative to Class C Felonies:*

- The bill will result in Class C felony offenders under Tenn. Code Ann. § 39-17-417 serving an additional 2.31 years (5.29 years, the average time served for a Class B felony – 2.98 years, the average time served for a Class C felony).
- Population growth will account for 19 ( $158 \times .1178$ ) additional admissions for a total of 177 ( $158 + 19$ ).
- According to the DOC, 43.36 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.36 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have

committed the subsequent offense at the same felony level as under current law (177 offenders x .4336 = 77 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 100 offenders [177 offenders – 77 (recidivism discount)] serving an additional 2.31 years (843.73 days) for a total of \$54,142 (\$64.17 x 843.73 days). The cost for 100 offenders is \$5,414,200 (\$54,142 x 100).

*Assumptions Relative to Class D Felonies:*

- The bill will result in Class D felony offenders under Tenn. Code Ann. § 39-17-417 serving an additional 1.18 years (2.98 years, the average time served for a Class C felony – 1.80 years, the average time served for a Class D felony).
- Population growth will account for 5 (40 x .1178) additional admissions for a total of 45 (40 + 5).
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (45 offenders x .3375 = 15 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 30 offenders [45 offenders – 15 (recidivism discount)] serving an additional 1.18 years (431 days) for a total of \$27,657 (\$64.17 x 431 days). The cost for 30 offenders is \$829,710 (\$27,657 x 30).

*Assumptions Relative to Class E Felonies:*

- The bill will result in Class E felony offenders under Tenn. Code Ann. § 39-17-417 serving an additional 0.59 years (1.80 years, the average time served for a Class D felony – 1.21 years, the average time served for a Class E felony).
- Population growth will account for 4 (30 x .1178) additional admissions for a total of 34 (30 + 4).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 34 offenders serving an additional 0.59 years (215.5 days) for a total of \$13,829 (\$64.17 x 215.5 days). The cost for 34 offenders is \$470,186 (\$13,829 x 34).

*Assumption Relative to Total Incarceration Cost:*

- The total additional incarceration cost is \$20,728,401 (\$14,014,305 + \$5,414,200 + \$829,710 + \$470,186).

*Assumption Relative to District Attorneys, Public Defenders, and the Courts:*

- The bill will not create new convictions. Rather, it will enhance the punishment offenses currently being prosecuted. Any impact on the caseloads of the District Attorneys General Conference, the District Public Defenders Conference, or the courts can be accommodated within existing resources without an increased appropriation or reduced reversion.

*Assumption Relative to Fees Imposed Per Felony Offense:*

- Based on the Fiscal Review Committee's 2008 study of incarceration costs and fines, collection of fines for felony offenses is negligible. There will not be a significant increase in revenue as a result of the mandatory minimum fines for these offenses.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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